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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

- - - - -X  
UNITED STATES OF AMERICA 20-CR-6093(G)  
  
vs.  
  
FRANK SALERNO, Rochester, New York  
Defendant. October 8, 2020  
10:01 a.m.  
- - - - -X

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE FRANK P. GERACI, JR.  
UNITED STATES DISTRICT CHIEF JUDGE

JAMES P. KENNEDY, JR., ESQ.  
United States Attorney  
BY: KYLE P. ROSSI, ESQ.  
Assistant United States Attorney  
500 Federal Building  
Rochester, New York 14614  
  
MARIANNE MARIANO, ESQ.  
Federal Public Defender  
BY: JEFFREY CICCONE, ESQ.  
Assistant Federal Public Defender  
28 East Main Street, Suite 400  
Rochester, New York 14614  
Appearing on behalf of the Defendant

ALSO PRESENT: Erin Wong, U.S. Probation Office  
  
  
COURT REPORTER: Christi A. Macri, FAPR-RMR-CRR-CSR(NY/CA)  
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P R O C E E D I N G S

\* \* \*

(WHEREUPON, the defendant is present).

**THE COURT:** Good afternoon.

02:10:26PM **THE CLERK:** This is 20-CR-6093, United States of  
America vs. Frank Salerno.

Kyle Rossi is here on behalf of the Government.

Jeff Ciccone on behalf of the defendant.

Erin Wong is here from Probation.

02:10:42PM This matter is on for sentencing.

**THE COURT:** Good afternoon. Are you Frank Salerno?

**THE DEFENDANT:** Yes, Your Honor.

**THE COURT:** Mr. Salerno appears with his attorney  
Mr. Ciccone. Mr. Rossi appears on behalf of the Government.

02:10:55PM The Court does have the presentence report; also  
have a statement by the Government; statement by the  
defendant, including a letter of reference and a statement  
written by the defendant.

02:11:13PM There are objections filed by the defense,  
specifically a two level upward adjustment for sexual contact.  
Do you want to be heard on that?

**MR. CICCONE:** Judge, I mean, I'm not going to repeat  
what's in our papers. Obviously the argument just boils down  
to whether the enhancement should apply. The Second Circuit  
02:11:35PM hasn't decided it yet. And courts, frankly, kind of go both

1 ways. So my argument is that you should follow the example of  
2 courts that have said that this does not qualify for the  
3 enhancement for the commission of a sex act.

4 **THE COURT:** Okay. Mr. Rossi?

02:11:51PM 5 **MR. ROSSI:** Judge, pursuant to *Lawlor* -- I did not  
6 pick up on the enhancement or even the potential for it. So  
7 pursuant to *Lawlor*, I would prefer to remain silent with  
8 respect to it.

9 No matter how the Court resolves that, I would -- I  
02:12:03PM 10 don't think that the increased sentence range that would  
11 result as a result of application of the points is warranted  
12 here. I would ask that the Court impose a sentence consistent  
13 with the terms of the plea agreement, and specifically  
14 consider the guidelines that are set forth in the plea  
02:12:20PM 15 agreement, not the elevated guidelines that are within the  
16 presentence report.

17 **THE COURT:** Okay, thank you.

18 Regarding the plea agreement, the plea agreement  
19 did come to a determination that the total offense level  
02:12:36PM 20 should be 33. With a criminal history category III results in  
21 a sentencing range of 168 to 210 months imprisonment.

22 Probation has determined a two level additional  
23 adjustment upward for sexual contact pursuant to guideline  
24 2G2.1(b)(2)(A), which calls for a two level upward adjustment  
02:13:15PM 25 for the commission of a sex act or sexual contact.

1           The defense has argued that it does not apply in  
2 this case. Specifically we're talking about an act of  
3 masturbation by the victim at the encouragement of the  
4 defendant in this case.

02:13:36PM 5           And as Mr. Ciccone indicated, there is conflicting  
6 case law in different circuits. Third Circuit versus the  
7 Sixth Circuit -- excuse me, the case that they cited versus  
8 the cases that were noted by the Probation Department,  
9 specifically the case out of the Sixth Circuit Court of  
02:14:03PM 10 Appeals, *U.S. vs. Shafer*, S-H-A-F-E-R, at 573 F.3d 267,  
11 Sixth Circuit decision 2009, which indicates that the focus is  
12 on the conduct of the defendant instead of on the conduct of  
13 the state of mind of the victim.

14           In this case where you have an act where the  
02:14:35PM 15 defendant encourages the victim to engage in active  
16 masturbation for his own sexual gratification, that that would  
17 be included under the definition of sexual contact for that  
18 guideline.

19           And the Court in reading the decision feels that is  
02:14:56PM 20 the more reasonable interpretation of that and will apply the  
21 two level upward adjustment, which would then result in a  
22 total offense level of 35, with a criminal history category  
23 III, sentencing range would be 210 to 265 months imprisonment.  
24 And obviously I'll note the objection of the defense to that  
02:15:20PM 25 determination.

1                   Okay. Government want to be heard on sentencing?

2                   **MR. ROSSI:** Judge, I would move sentencing. I think  
3 I just heard the Court say the guideline range would be 210 to  
4 265 months.

02:15:33PM 5                   **THE COURT:** Should be 210 to 240 because the maximum  
6 sentence of 20 years. I'm sorry, I did misspeak.

7                   **MR. ROSSI:** Yes, Judge. And, Your Honor, I would --  
8 despite the Court's resolution of the enhanced guidelines, I  
9 would still ask the Court to employ the guidelines that -- or  
02:15:50PM 10 find sentencing within the guidelines that are set forth  
11 within the plea agreement.

12                   I have nothing further, Judge. I think the PSR  
13 accurately captures the defendant's conduct in this case.

14                   **THE COURT:** Thank you. Mr. Ciccone?

02:16:02PM 15                   **MR. CICCONE:** Thanks, Judge. Judge, I'm asking you  
16 to apply a sentence below the guidelines, and I think it's  
17 warranted in this case for a couple of reasons.

18                   I think first that Mr. Salerno's conduct is, I  
19 think, different in this case than the average case of this  
02:16:17PM 20 type. This is not a situation where Mr. Salerno was going out  
21 and soliciting or initiating contact with minors.

22                   He was playing a video game on his phone and the  
23 victim in this case reached out to him totally unsolicited.  
24 They started chatting with each other and developed a  
02:16:39PM 25 relationship. At that point Mr. Salerno didn't even know that

1 the girl was underage.

2 Now, it turned out he did figure it out later on  
3 and the relationship took a turn and he acknowledges that,  
4 that's why he's pled guilty. So I don't mean to minimize the  
02:16:57PM 5 eventual conduct here, but I think it is different than the  
6 average case where you have to worry about a defendant who is,  
7 you know, out looking for underage girls, which clearly wasn't  
8 the case here.

9 Aside from that we have a situation where  
02:17:12PM 10 Mr. Salerno ended the relationship before he was ever arrested  
11 by agents. Right now there's a period of time at the end  
12 where he's talking to an undercover agent, obviously not  
13 knowingly, but then there's a gap between when that happens  
14 and when agents eventually come and arrest him.

02:17:33PM 15 And he had cut off communication at that point, you  
16 know, frankly because he met his current girlfriend and just  
17 ended the relationship with the online person.

18 Aside from the conduct in this case being I think a  
19 little unique, Judge, we also have a situation where we have  
02:17:52PM 20 someone with, you know, clearly mental health struggles. As I  
21 outlined and as the PSR gives a little more detail on,  
22 Mr. Salerno was, you know, in the military, in the reserves,  
23 was kind of exposed to the aftermath of the Boston marathon  
24 bombing and had, you know, some struggles with that. I think  
02:18:18PM 25 there was a diagnosis of PTSD and probably some underlying

1 mental health issues as well.

2           Eventually he was medically discharged, and I think  
3 certainly this is a case where we have someone who needs  
4 mental health treatment. He didn't really get the treatment  
02:18:36PM 5 he needed prior to this, but I think we're in a position where  
6 we can make sure that he gets the treatment that he needs.

7           Judge, I think for the combination of those  
8 reasons, a sentence below the guidelines is warranted in this  
9 case.

02:18:52PM 10           **THE COURT:** Thank you, Mr. Ciccone.

11           Mr. Salerno, would you like to be heard?

12           **THE DEFENDANT:** Your Honor, when the Boston marathon  
13 happened, I was actually there. I had a few friends running  
14 in the race and I was supporting them, they were part of my  
02:19:18PM 15 unit at that time and as part of the stuff my unit wanted us  
16 to do as a lower ranking soldier at the time was to support  
17 our comrades that were there.

18           So I ended up going there and, like, seeing the  
19 bombs went off and watching people, like, bleed all over the  
02:19:36PM 20 road and, like, ever since that time, like even to this day I  
21 still wake up with nightmares. So I don't sleep well at  
22 night.

23           And like -- like even, like, walking down the  
24 street I look over my shoulder. And my fiancée at the time  
02:19:54PM 25 was like I believe you have PTSD and brought it up to my

1 counselor, and he asked me and I told him everything, too,  
2 what it was like. I don't know. Like ever since that day  
3 everything has not been right to me.

4 So -- and then I met this person and we kind of  
02:20:14PM 5 talked, we related a little bit and I realized I was wrong,  
6 and I should have known better, but I wasn't really paying  
7 attention I could say and just -- just really wasn't using my  
8 head, Your Honor.

9 And now that I moved -- actually, the time gap was  
02:20:33PM 10 when I was incarcerated for the assault and battery in April  
11 and I came out, met my girlfriend right after I got out, and  
12 right then and there we started, like, trying to have a  
13 relationship.

14 And moving forward with my life, like, I was  
02:20:52PM 15 working, I was doing good. And like my girlfriend said in her  
16 letter there, she was -- she bought me a shirt one day and,  
17 like, I took that off my back because the lady got into a car  
18 accident and I, like, helped her with it and, like, gave her  
19 the shirt off my back as a bandage and, like, to stop her  
02:21:14PM 20 bleeding and waited until the paramedics and the police came.

21 And basically everything was, like, going good  
22 until this happened and now I kinda lost my girlfriend. So  
23 she kind of walked away from me now, and now it's kind of  
24 like -- realized it's a struggle by myself, Your Honor. And  
02:21:38PM 25 that's all.



1                   **THE COURT:** When was the Boston marathon bombing?

2                   **THE DEFENDANT:** It was in 2013, Your Honor, April  
3 2013 -- actually, April 15th, 2013, Patriot's Day.

4                   **THE COURT:** How do you explain the acts after you  
02:22:06PM 5 were convicted of strangulation, suffocation in 2019?

6                   **THE DEFENDANT:** Well, that -- that I kind of do not  
7 remember. They were saying -- like my lawyer at the time was  
8 saying I wasn't even there. I basically wasn't -- like, I  
9 walked -- the person, they said I attacked them. I just was,  
02:22:29PM 10 like, panicked at the time and I was, like, listen, whatever I  
11 have to do to get out of jail I'll do it, I'll take time if I  
12 have to. And my lawyer came up with probation for two years  
13 and the GPS, and that's when I moved to Pittsfield in March  
14 and I moved in with my mom, my biological mom, Your Honor, and  
02:22:50PM 15 that was actually going really well because I was actually  
16 doing a lot of work taking care of my mom's boyfriend, who has  
17 COPD, and he's on oxygen; and my mom would need rides -- need  
18 to be driven to work, and I was driving her to work every  
19 night. And I'd wake up at 4:30 in the morning, pick her up  
02:23:11PM 20 from where she worked, drive her back home, and then I would  
21 be sleeping at home, then I go to work and then I come back  
22 and drive her to work. And it was repetitive, Your Honor.

23                   **THE COURT:** Okay. What about the incident in 2013?

24                   **THE DEFENDANT:** That was like -- the story kept  
02:23:40PM 25 changing, Your Honor. I picked up on that with my lawyer and

1 I told my lawyer like this isn't true, and my lawyer -- and I  
2 guess it was -- I was not sentenced for anything for that, it  
3 was dropped or --

4 **THE COURT:** It was a *nolo* disposition?

02:24:01PM 5 **THE DEFENDANT:** Right.

6 **THE COURT:** Okay. Now, obviously you've got some  
7 mental health issues.

8 **THE DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** What have you been doing toward that  
02:24:10PM 10 end?

11 **THE DEFENDANT:** I was going to counseling, I was  
12 seeing Paul Mott at the brain center in Pittsfield; and before  
13 that actually I was going to the Veterans Northeast Outreach  
14 Center in Haverhill and I was seeing Lieutenant Colonel Jacob  
02:24:28PM 15 Bromo at the time and he was a counselor and I was actually  
16 doing that also, too, as I was out on the street.

17 And I was seeing Paul Mott in Pittsfield and I was  
18 going every day to my appointments and everything and I was  
19 keeping up with that every day. It was always every day at a  
02:24:46PM 20 certain time.

21 **THE COURT:** Then you were arrested on this?

22 **THE DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** Okay.

24 **THE DEFENDANT:** I was arrested in December.

02:24:54PM 25 **THE COURT:** Okay. Now, when you were arrested there

1 were photos of other young girls on your phone. What was that  
2 about?

3 **THE DEFENDANT:** I don't know, Your Honor. I never  
4 knew they were there. I just never really looked into my  
02:25:11PM 5 phones much. I mean, I basically worked all the time when I  
6 was living on -- before that. I was working at Old Forest,  
7 plus I was with the military. So like, I mean, I had  
8 girlfriends at the time who I was -- like when I was still  
9 serving and they would send me pictures and stuff of  
02:25:27PM 10 themselves, but that was them.

11 **THE COURT:** What about young girls?

12 **THE DEFENDANT:** They weren't young, Your Honor, they  
13 were mostly my age.

14 **THE COURT:** Okay. All right, anything else you want  
02:25:39PM 15 to say?

16 **THE DEFENDANT:** Just that I apologize for this. I  
17 definitely have learned a lesson from this and that I hope in  
18 the future I can get the help that I need and I can move  
19 forward and basically be a better person and actually live --  
02:25:58PM 20 actually have a family and have a son or daughter because I  
21 would like that. I mean, I would love to have my own kids,  
22 make them -- like do whatever, whatever they want to do to  
23 support them.

24 **THE COURT:** Okay, thank you.

02:26:13PM 25 Regarding this matter the defendant, Frank Salerno,

1 did plead guilty to receipt of child pornography. He's been  
2 in custody some nine months and 19 days.

3 There's currently a detainer out of the State of  
4 Massachusetts on a violation of probation.

02:26:32PM 5 He's a resident of Pittsfield, Massachusetts. He's  
6 31 years of age, has a high school degree, is a United States  
7 citizen.

8 He did waive indictment, pled guilty to enticing a  
9 minor to engage in sexually explicit conduct between July and  
02:26:54PM 10 August of 2019. It was discovered by the father of the  
11 victim, a 14-year-old girl, that the defendant had been  
12 communicating with this young girl by way of a cell phone  
13 through conversation between the defendant and the  
14 14-year-old girl of a sexual nature.

02:27:18PM 15 Initially the victim indicated she did not tell the  
16 defendant her age, but later it did come out that she was a  
17 young girl, under the age of 16.

18 That she did send him photographs while she was a  
19 minor. Ultimately an undercover officer got involved in  
02:27:43PM 20 communicating with the defendant during the communications  
21 between the defendant and this 14-year-old victim; did include  
22 him encouraging her to act -- to engage in acts of  
23 masturbation, to photograph those particular acts.

24 The defendant was interviewed by agents after the  
02:28:07PM 25 conducting of a search warrant on his cell phone and during

1 the interview he did admit his acts with this young girl,  
2 specifically communicating with her and soliciting photographs  
3 of child pornography.

4 Police indicated that when they did search the  
02:28:29PM 5 phone they also found photos of other young girls on his  
6 phone.

7 The base offense level for this is level 32.

8 There's a two level increase for the victim being  
9 between the ages of 12, but less than 16. Specifically in  
02:28:48PM 10 this case she was 14 years of age.

11 A two level increase for the use of a computer.

12 And a two level increase, as the Court previously  
13 determined, that this did involve acts of sexual contact in  
14 that the defendant did solicit the victim 14-year-old girl to  
02:29:08PM 15 engage in an act of masturbation for his own sexual  
16 gratification.

17 There's a three level downward adjustment for his  
18 acceptance of responsibility. He has accepted responsibility  
19 by his plea of guilty; and also a letter he sent to the Court  
02:29:25PM 20 and his statement to Probation, all resulting in a total  
21 offense level of 35.

22 His criminal history category is a level III. He  
23 has a conviction for receiving stolen property in 2011.

24 Then in 2018 a conviction for strangulation and  
02:29:44PM 25 suffocation, which involved an underlying attempted rape and

1 sexual abuse. The defendant was on probation at the time of  
2 that particular act.

3 There's a separate incident between those two in  
4 2013. However, that was a *nolo* plea that we previously  
02:30:04PM 5 discussed.

6 The defendant indicates that he was abused by his  
7 father when he was young. He was adopted.

8 He has been engaged in mental health treatment  
9 programs for both depression, PTSD; did witness the Boston  
02:30:23PM 10 marathon bombing.

11 He did serve in the Army National Guard between  
12 2010 and 2015. Has been employed previously as a landscaper.

13 It appears he's had no drug use of illegal  
14 controlled substances.

02:30:46PM 15 He did graduate from high school, did attend  
16 special education classes.

17 Based upon a total offense level of 35 and a  
18 criminal history category of III, the sentencing range under  
19 the guidelines would be 210 to 240 months.

02:31:05PM 20 The plea agreement called for a sentencing range of  
21 168 months to 210 months based upon the fact the parties did  
22 not include a two level upward adjustment for sexual contact  
23 being involved in this act.

24 Mr. Salerno, the Court has to consider a number of  
02:31:27PM 25 factors in this case. First of all, the seriousness of the

1 offense. Obviously engaging in this type of activity with a  
2 young girl, very impressionable 14-year-old girl is a serious  
3 matter.

4 The second thing the Court has to consider is your  
02:31:42PM 5 background, character and history. Your history of engaging  
6 in activities such as strangulation, suffocation that you pled  
7 guilty to; being on probation supervision at the time is  
8 obviously very concerning to this Court.

9 The Court has to consider the fact that you  
02:32:03PM 10 obviously are acknowledging that you have some serious mental  
11 health issues, and luckily have been engaging in treatment for  
12 that and that's something that is obviously to your benefit  
13 and something that the Court certainly gives you credit for.

14 But the Court has to impose a sentence not greater  
02:32:23PM 15 than necessary to accomplish the purposes of sentencing, but  
16 one that does deter you and others from engaging in this type  
17 of activity in the future.

18 Although based upon the increase for the two level  
19 adjustment for sexual contact, the guideline range would be  
02:32:41PM 20 210 to 240 months imprisonment, the Court feels that that is  
21 more than necessary to accomplish all the purposes of  
22 sentencing.

23 Therefore, the Court is going to impose a sentence  
24 with a downward departure from that guideline sentence,  
02:32:59PM 25 specifically a sentence of 180 months, which does fall within

1 the previously arranged plea agreement. The Court feels that  
2 is the sentence that's sufficient, enough to recognize the  
3 seriousness of the offense, consider the defendant's history,  
4 not greater than necessary to accomplish purposes of  
02:33:17PM 5 sentencing, will deter the defendant and others from engaging  
6 in this type of activity in the future.

7 The Court does waive any cost of incarceration.

8 That's to be followed by a ten year period of  
9 supervised release with a number of conditions, including that  
02:33:36PM 10 the defendant not commit any federal, state or local crimes.

11 He's prohibited from possessing any firearm,  
12 ammunition or dangerous device.

13 You shall not possess a controlled substance unless  
14 prescribed by a physician.

02:33:53PM 15 There's no history here of substance abuse,  
16 therefore, the Court is not imposing a condition of drug  
17 testing.

18 However, you shall cooperate with the collection of  
19 a DNA sample.

02:34:06PM 20 The defendant also shall not possess any computer,  
21 data storage device, or internet capable device unless he  
22 participates in the computer and internet monitoring program  
23 or unless authorized by the Court or Probation.

24 The defendant must provide Probation with advanced  
02:34:24PM 25 notice of any computers, automated or connected devices that



1 will be used during the term of supervision. Probation is  
2 authorized to install any application necessary to surveil all  
3 activity on such computers or connected devices owned or  
4 operated by the defendant. He's required to pay the cost of  
02:34:46PM 5 monitoring services.

6 Probation will be notified of any impermissible or  
7 suspicious activity occurring on those devices. As triggered  
8 by such activity, the defendant shall consent and cooperate  
9 with unannounced examinations of such computer equipment or  
02:35:05PM 10 devices.

11 That shall include retrieval and copying of all  
12 data from the computer, connected device, storage media or  
13 internet. Any such monitoring or examination shall be  
14 designed to avoid any reading of privileged information or any  
02:35:24PM 15 private material that is not legally or reasonably likely to  
16 lead to illegal material.

17 The defendant must participate in a sex offense  
18 related treatment program, follow the rules of the program.  
19 Probation will supervise the details of the program and the  
02:35:42PM 20 defendant's participation, including the selection of a  
21 provider and a schedule. He's not to leave treatment until  
22 completion or is ordered by the Court. He's required to  
23 contribute to the cost of services rendered.

24 The defendant shall not have any deliberate contact  
02:35:59PM 25 with any child under 18 years of age, excluding his biological

1 or adopted children, unless approved by Probation or the  
2 Court.

3 He shall not loiter within 100 feet of school  
4 yards, playgrounds, arcades, or other places primarily used by  
02:36:15PM 5 children under the age of 18.

6 Probation has the discretion to authorize the  
7 defendant to pick up his own children from school or other  
8 functions. However, authorization must be obtained in advance  
9 from Probation or the Court.

02:36:31PM 10 To monitor the defendant's compliance with not  
11 buying or subscribing to online services, the defendant shall  
12 provide Probation with access to any requested personal or  
13 business financial information.

14 The defendant shall register with the state sex  
02:36:45PM 15 offender registration agency in any state where he may reside,  
16 be employed, carry on a vocation, or be a student, provide  
17 proof of the registration to Probation.

18 Probation is authorized to release information in  
19 the presentence report to the New York State Board of  
02:37:07PM 20 Examiners for Sex Offenders.

21 Further disclosure to the County Court to the  
22 parties involved in determination of the defendant's final  
23 classification is also authorized.

24 The defendant shall submit to a search of his  
02:37:18PM 25 person, property, vehicle, residence upon reasonable suspicion

1 and permit confiscation of evidence or contraband discovered.

2 The defendant shall submit to a polygraph,  
3 computerized voice stress analyzer, or other testing not to  
4 exceed twice in a calendar year, and an additional two retests  
02:37:39PM 5 per year. The testing may include examination using a  
6 polygraph, computerized voice stress analyzer, or other  
7 similar device to obtain information for supervision, case  
8 monitoring and treatment.

9 He shall answer the questions posed during the  
02:37:56PM 10 examinations, subject to his right to challenge in a court of  
11 law the use of any statements as violations of his  
12 Fifth Amendment rights. In this regard the defendant is  
13 deemed not to have waived his Fifth Amendment rights by making  
14 such statements.

02:38:13PM 15 The results of any polygraph, pretest and polygraph  
16 examinations may be disclosed to Probation and the Court which  
17 shall not be disclosed further without court order. The  
18 defendant is required to contribute to the cost of services  
19 rendered.

02:38:29PM 20 The defendant shall participate in a mental health  
21 treatment program, including a mental health evaluation and  
22 treatment recommended. The Probation Office will supervise  
23 the details of the testing and treatment, including the  
24 selection of a treatment provider and a schedule. If  
02:38:45PM 25 inpatient treatment is recommended, that must be approved by

1 the Court unless the defendant consents. He's not to leave  
2 treatment until completion or is ordered by the Court. While  
3 in treatment and taking any medications, he shall abstain from  
4 the use of alcohol. He's required to contribute to the cost  
02:39:03PM 5 of services rendered.

6 The defendant does not have the ability to pay a  
7 fine and, therefore, the Court is not imposing any fine in  
8 this case.

9 There is a \$500 special assessment pursuant to the  
02:39:28PM 10 Amy, Vicky and Andy Child Pornography Victim Assistance Act of  
11 2018. The defendant shall pay installments of \$25 per quarter  
12 if he's in non-Unicor or Unicor grade 5; if assigned grades 1  
13 through 4 in Unicor the defendant shall pay installments of  
14 50% of his monthly pay. While on supervision he shall make  
02:39:53PM 15 payments in the amount of 10% of his monthly gross income.

16 The defendant shall also pay a special assessment  
17 of \$100, which shall be payable to the Clerk of Court.  
18 Payment shall begin under the Bureau of Prisons Financial  
19 Responsibility Program.

02:40:10PM 20 Finally, the defendant is to forfeit certain  
21 property, and that is specifically one LG smart phone.

22 Anything further from Probation?

23 **MS. WONG:** Yes, Your Honor. Does the Court wish to  
24 impose the mandatory \$5,000 Justice for Victims of Trafficking  
02:40:30PM 25 Act assessment?

1           **THE COURT:** No. The defendant is clearly indigent  
2 and cannot afford to pay the mandatory \$5,000 Justice For  
3 Victims of Trafficking Act, and that will be waived.

4           **MS. WONG:** That's all, Your Honor.

02:40:42PM 5           **THE COURT:** Anything more from the Government?

6           **MR. ROSSI:** Judge, I would move to dismiss the  
7 complaint that's pending in this case.

8           **THE COURT:** Yes, the underlying criminal complaint  
9 will be dismissed.

02:40:50PM 10           **MR. CICCONE:** Judge, I'm sorry.

11           **THE COURT:** Go ahead.

12           **MR. CICCONE:** I would ask that you include a  
13 recommendation that Mr. Salerno be placed as close as possible  
14 to Pittsfield.

02:41:00PM 15           **THE COURT:** Massachusetts, right?

16           **MR. CICCONE:** Yes.

17           **THE COURT:** Yes, the Court will recommend that the  
18 defendant be placed as close as possible to Pittsfield,  
19 Massachusetts where he resides and has family and friends.  
02:41:11PM 20 That can obviously assist his return to the community  
21 ultimately.

22           Mr. Salerno, I do notify you of your right to  
23 appeal. In this case the Court did impose a sentence in  
24 accordance with the plea agreement, therefore, you waived your  
02:41:26PM 25 right to appeal or attack the sentence. However, if there are

1 any other issues for appeal you need to discuss that with  
2 Mr. Ciccone.

3 Do you understand that?

4 **THE DEFENDANT:** Yes, Your Honor.

02:41:33PM 5 **THE COURT:** Okay. Just make sure you get involved  
6 in as many programs, particularly mental health, as you can  
7 while you're incarcerated. That will only help your reentry  
8 into the community. Okay, good luck.

9 (WHEREUPON, proceedings adjourned at 2:41 p.m.)

10 \* \* \*

11 **CERTIFICATE OF REPORTER**

12  
13 In accordance with 28, U.S.C., 753(b), I certify that  
14 these original notes are a true and correct record of  
15 proceedings in the United States District Court for the  
16 Western District of New York before the Honorable Frank P.  
17 Geraci, Jr. on October 8th, 2020.

18  
19 S/ Christi A. Macri

20 Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)  
21 Official Court Reporter  
22  
23  
24  
25